



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FEB 26 2016

Congresswoman Julia Brownley
Julia Brownley for Congress
P. O. Box 2018
Thousand Oaks, CA 91358

RE: MUR 6646

Dear Congresswoman Brownley:

On February 23, 2016, the Federal Election Commission reviewed the allegations in the complaint you filed on September 14, 2012, and found that on the basis of the information provided in the complaint, and information provided by the respondents, there is no reason to believe Matthew Doheny and David Hilty violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1). Also on this date, the Commission decided to dismiss this matter as it pertains to Strickland for Congress 2012 and Lysa Ray in her official capacity as treasurer. Accordingly, the Commission closed its file in this matter on February 23, 2016.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Daniel A. Petalas
Acting General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", is written over the typed name.

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosures: Factual and Legal Analyses

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: Matthew Doheny
6 David Hilty

MUR 6646

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8 **I. INTRODUCTION**

9 This matter was generated by a Complaint alleging violations of the Federal Election
10 Campaign Act of 1971, as amended (the "Act") by Respondents Matthew Doheny ("Doheny")
11 and David Hilty ("Hilty"). It was scored as a low-rated matter under the Enforcement Priority
12 System, a system by which the Federal Election Commission ("Commission") uses formal
13 scoring criteria as a basis to allocate its resources and decide which matters to pursue.

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 Complainant Julia Brownley¹ alleges that the Committee accepted contributions from
16 two individuals in excess of the limitations of the Act. Compl. at 1. Complainant bases her
17 allegations on information from the Committee's 2012 July Quarterly Report ("July Quarterly
18 Report"), which discloses two contributions from Respondents Matthew Doheny and David
19 Hilty, each totaling \$5,000. *Id.* at 1-2; *see also id.*, Attach. A at 1-3 (pages from July Quarterly
20 Report disclosing Doheny and Hilty contributions). The Committee reported receiving the
21 contributions on June 28, 2012, after California's June 5 primary election. *Id.* The July
22 Quarterly Report reflects that the Committee designated \$2,500 of each contribution to both the
23 primary and general elections. *Id.*² The Complainant asserts that the Committee could only
24 designate the contributions to the primary election if both Doheny and Hilty "made their

¹ Complainant defeated Strickland in the 2012 general election, and currently represents the 26th Congressional District.

² *See also* Committee's amended 2012 July Quarterly Report, filed on September 5, 2013, at 40-41, 43-44.

1 contributions on or before June 5,” the primary election date, and the Committee deposited them
2 within ten days of receipt. *Id.* at 2. Furthermore, the Complainant states that the Committee
3 disclosed no primary debt, and as such, “had no debts for which the contributions could have
4 been intended to retire,” thus presumably exceeding the applicable limitations of the Act.³ *Id.*

5 The Committee responds that Doheny and Hilty made their contributions via credit card
6 prior to the primary election, and that “it was both” Doheny’s and Hilty’s “intent to contribute
7 towards the Primary Election.” Committee Resp. at 1. The Committee also maintains that it
8 attempted to process the credit card transactions before and after the primary election, but could
9 not “get them through” until “the date in question” (*i.e.*, June 28, 2012). *Id.* The Committee
10 states that “[s]ince [the] donations were dated before the election . . . they were to be applied to
11 the Primary.” *Id.* The Committee adds that it deposited the contributions within the ten-day
12 period after processing the transactions. *Id.*

13 The Committee’s Response includes copies of contribution information forms from
14 Doheny and Hilty, which reflect \$5,000 in contributions from their respective credit card
15 accounts. *Id.* at 3, 5. The undated forms do not indicate an election designation, although a
16 statement on each form states that “[f]or contributions to both the primary and general election
17 funds, individuals may contribute up to \$5,000” *Id.* The bottom of each form also provides
18 that “[a]n individual may contribute up to \$2,500 for the primary election and up to \$2,500 for
19 the general election. Individuals may write one check for \$5,000 and indicate ‘Primary/General’
20 in the memo of the check.” *Id.* The forms do not appear to include guidance on designating
21 credit card contributions.

³ The Act and Commission regulations prohibited individuals from making contributions to any candidate and his authorized committees in excess of \$2,500 per election during the 2011-2012 election cycle. *See* 52 U.S.C. § 30116(a)(1)(A), 11 C.F.R. § 110.1(b)(1). *See also* 52 U.S.C. § 30116(f), 11 C.F.R. § 110.9 (prohibiting candidates and committees from knowingly accepting contributions that exceed the limit).

1 The Committee's Response also includes two copies of what appear to be computer-
2 generated forms labeled "Donation Report" from a Committee consultant. *Id.* at 2, 4. *See also*
3 Doheny Resp., Ex. A (stating that Committee consultant Joe Justin provided internal donation
4 reports documenting the June 4, 2012 contributions). Each report displays the contributor's
5 name, address, occupation, and employer information, and reflects the date at the top and bottom
6 of each document. Committee Resp. at 2, 4.

7 If the contributors made the contributions prior to the primary election on June 5, 2012,
8 any excessive portions could have been redesignated to the general election. Under 11 C.F.R.
9 § 110.1(b)(6), "a contribution shall be considered to be made when the contributor relinquishes
10 control over the contribution." Further, a contribution by credit card is considered to be received
11 when the contributor's authorization to charge the credit card is received. Advisory Opinion
12 1990-04 (American Veterinary Medical Association PAC); *see also* 11 C.F.R. § 102.8 (stating
13 "Date of receipt shall be the date such person obtains possession of the contribution"). Here,
14 Doheny and Hilty appeared to have relinquished control of their contributions on June 4, 2012,
15 and the Committee received their authorizations that same day. Committee Resp. at 2, 4.
16 Accordingly, the Committee should have reported the date of receipt in its July Quarterly Report
17 as June 4, not June 28. *See* 11 C.F.R. § 104.8 (requiring a political committee to report the date
18 of receipt for contributions).

19 The record reflects that half of each contribution was apparently intended to be
20 designated to the primary and general elections, respectively. Specifically, the Doheny
21 "Donation Report" reflects that he contributed a total of \$5,000, and designated \$2,500 each for
22 the primary and general elections, via a payment through his VISA credit card on June 4, 2012.
23 Committee Resp. at 2. In addition, the report displays a handwritten notation that states, "\$5,000

1 – processed & already in,” along with “G12 - \$2500” and “P12 - \$2500.” *Id.* Separately,
2 Doheny confirms that he made his contribution of \$5,000 on June 4, 2012, not on June 28, 2012,
3 as the Complaint alleges. Doheny Resp. at 1-2.⁴

4 Similarly, the Hilty “Donation Report” reflects that he contributed a total of \$5,000, and
5 designated \$2,500 each for the primary and general elections, making payment through his
6 American Express credit card on June 4, 2012. Committee Resp. at 4. Hilty’s report also
7 displays a handwritten note that states, “\$5,000 Amex – processed and already in,” as well as
8 “6/28/12,” “G12 P12, \$2,500 each.” *Id.* Separately, Hilty responded that he made a \$5,000
9 contribution to the Strickland campaign on June 4, 2012, “by providing a signed credit card
10 authorization form,” and that it represented a \$2,500 contribution to the primary election and a
11 \$2,500 contribution to the general election. Hilty Resp. at 1. Hilty contends that he “has no
12 knowledge of how his contribution was handled by [the Committee] after he relinquished
13 control,” and “has no knowledge as to why his 2012 primary contribution was reported . . .
14 disclosing a contribution date of June 28, 2012.” *Id.*⁵

15 The record suggests that Doheny and Hilty made their contributions before the primary
16 election. The instructions on the contributor information forms provided guidance as to how
17 each contributor could designate his contribution where a check was used. Committee Resp. at
18 3, 5. There was no guidance given on the form addressing credit card contributions. Since the
19 form permitted contributors to make a \$5,000 donation and Doheny and Hilty made their
20 contributions before the primary election, the Committee could have presumed the contributions

⁴ Doheny requested a refund of his primary contribution “out of an abundance of caution,” though to date, the Committee has not disclosed any such refund. *Id.*, Ex. B.

⁵ Hilty requested a refund of his primary contribution “out of an abundance of caution,” though to date, the Committee has not disclosed any such refund. *Id.*, Ex. B.

1 were intended to be apportioned between the primary and general elections. *See* 11 C.F.R.
2 § 110.1(b)(5)(ii)(B). In light of the timing of the contributions, the lack of instructions provided
3 by the Committee concerning the use of credit cards, and the ability of the Committee to seek
4 redesignation of the contributions, the Office of General Counsel recommends that the
5 Commission find no reason to believe that Respondents Matthew Doheny and David Hilty
6 violated 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

7

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Strickland for Congress 2012
and Lysa Ray as treasurer

MUR 6646

I. INTRODUCTION

This matter was generated by a Complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and underlying Commission regulations by Strickland for Congress 2012 and Lysa Ray in her official capacity as treasurer (collectively the "Committee"). It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

Complainant Julia Brownley¹ alleges that the Committee accepted contributions from two individuals in excess of the limitations of the Act. Compl. at 1. Complainant bases her allegations on information from the Committee's 2012 July Quarterly Report ("July Quarterly Report"), which discloses two contributions from Respondents Matthew Doheny and David Hilty, each totaling \$5,000. *Id.* at 1-2; *see also id.*, Attach. A at 1-3 (pages from July Quarterly Report disclosing Doheny and Hilty contributions). The Committee reported receiving the contributions on June 28, 2012, after California's June 5 primary election. *Id.* The July Quarterly Report reflects that the Committee designated \$2,500 of each contribution to both the

¹ Complainant defeated Strickland in the 2012 general election, and currently represents the 26th Congressional District.

1 primary and general elections. *Id.*² The Complainant asserts that the Committee could only
2 designate the contributions to the primary election if both Doheny and Hilty “made their
3 contributions on or before June 5,” the primary election date, and the Committee deposited them
4 within ten days of receipt. *Id.* at 2. Furthermore, the Complainant states that the Committee
5 disclosed no primary debt, and as such, “had no debts for which the contributions could have
6 been intended to retire,” thus presumably exceeding the applicable limitations of the Act.³ *Id.*

7 The Committee responds that Doheny and Hilty made their contributions via credit card
8 prior to the primary election, and that “it was both” Doheny’s and Hilty’s “intent to contribute
9 towards the Primary Election.” Committee Resp. at 1. The Committee also maintains that it
10 attempted to process the credit card transactions before and after the primary election, but could
11 not “get them through” until “the date in question” (*i.e.*, June 28, 2012). *Id.* The Committee
12 states that “[s]ince [the] donations were dated before the election . . . they were to be applied to
13 the Primary.” *Id.* The Committee adds that it deposited the contributions within the ten-day
14 period after processing the transactions. *Id.*

15 The Committee’s Response includes copies of contribution information forms from
16 Doheny and Hilty, which reflect \$5,000 in contributions from their respective credit card
17 accounts. *Id.* at 3, 5. The undated forms do not indicate an election designation, although a
18 statement on each form states that “[f]or contributions to both the primary and general election
19 funds, individuals may contribute up to \$5,000” *Id.* The bottom of each form also provides
20 that “[a]n individual may contribute up to \$2,500 for the primary election and up to \$2,500 for

² See also Committee’s amended 2012 July Quarterly Report, filed on September 5, 2013, at 40-41, 43-44.

³ The Act and Commission regulations prohibited individuals from making contributions to any candidate and his authorized committees in excess of \$2,500 per election during the 2011-2012 election cycle. See 52 U.S.C. § 30116(a)(1)(A), 11 C.F.R. § 110.1(b)(1). See also 52 U.S.C. § 30116(f), 11 C.F.R. § 110.9 (prohibiting candidates and committees from knowingly accepting contributions that exceed the limit).

1 the general election. Individuals may write one check for \$5,000 and indicate 'Primary/General'
2 in the memo of the check." *Id.* The forms do not appear to include guidance on designating
3 credit card contributions.

4 The Committee's Response also includes two copies of what appear to be computer-
5 generated forms labeled "Donation Report" from a Committee consultant. *Id.* at 2, 4. *See also*
6 Doheny Resp., Ex. A (stating that Committee consultant Joe Justin provided internal donation
7 reports documenting the June 4, 2012 contributions). Each report displays the contributor's
8 name, address, occupation, and employer information, and reflects the date at the top and bottom
9 of each document. Committee Resp. at 2, 4.

10 If the contributors made the contributions prior to the primary election on June 5, 2012,
11 any excessive portions could have been redesignated to the general election. Under 11 C.F.R.
12 § 110.1(b)(6), "a contribution shall be considered to be made when the contributor relinquishes
13 control over the contribution." Further, a contribution by credit card is considered to be received
14 when the contributor's authorization to charge the credit card is received. Advisory Opinion
15 1990-04 (American Veterinary Medical Association PAC); *see also* 11 C.F.R. § 102.8 (stating
16 "Date of receipt shall be the date such person obtains possession of the contribution"). Here,
17 Doheny and Hilty appeared to have relinquished control of their contributions on June 4, 2012,
18 and the Committee received their authorizations that same day. Committee Resp. at 2, 4.
19 Accordingly, the Committee should have reported the date of receipt in its July Quarterly Report
20 as June 4, not June 28. *See* 11 C.F.R. § 104.8 (requiring a political committee to report the date
21 of receipt for contributions).

22 The record reflects that half of each contribution was apparently intended to be
23 designated to the primary and general elections, respectively. Specifically, the Doheny

1 "Donation Report" reflects that he contributed a total of \$5,000, and designated \$2,500 each for
2 the primary and general elections, via a payment through his VISA credit card on June 4, 2012.
3 Committee Resp. at 2. In addition, the report displays a handwritten notation that states, "\$5,000
4 – processed & already in," along with "G12 - \$2500" and "P12 - \$2500." *Id.* Separately,
5 Doheny confirms that he made his contribution of \$5,000 on June 4, 2012, not on June 28, 2012,
6 as the Complaint alleges. Doheny Resp. at 1-2.⁴

7 Similarly, the Hilty "Donation Report" reflects that he contributed a total of \$5,000, and
8 designated \$2,500 each for the primary and general elections, making payment through his
9 American Express credit card on June 4, 2012. Committee Resp. at 4. Hilty's report also
10 displays a handwritten note that states, "\$5,000 Amex – processed and already in," as well as
11 "6/28/12," "G12 P12, \$2,500 each." *Id.* Separately, Hilty responded that he made a \$5,000
12 contribution to the Strickland campaign on June 4, 2012, "by providing a signed credit card
13 authorization form," and that it represented a \$2,500 contribution to the primary election and a
14 \$2,500 contribution to the general election. Hilty Resp. at 1. Hilty contends that he "has no
15 knowledge of how his contribution was handled by [the Committee] after he relinquished
16 control," and "has no knowledge as to why his 2012 primary contribution was reported . . .
17 disclosing a contribution date of June 28, 2012." *Id.*⁵

18 The record suggests that Doheny and Hilty made their contributions before the primary
19 election. The instructions on the contributor information forms provided guidance as to how
20 each contributor could designate his contribution where a check was used. Committee Resp. at

⁴ Doheny requested a refund of his primary contribution "out of an abundance of caution," though to date, the Committee has not disclosed any such refund. *Id.*, Ex. B.

⁵ Hilty requested a refund of his primary contribution "out of an abundance of caution," though to date, the Committee has not disclosed any such refund. *Id.*, Ex. B.

1 3, 5. There was no guidance given on the form addressing credit card contributions. Since the
2 form permitted contributors to make a \$5,000 donation and Doheny and Hilty made their
3 contributions before the primary election, the Committee could have presumed the contributions
4 were intended to be apportioned between the primary and general elections. *See* 11 C.F.R.
5 § 110.1(b)(5)(ii)(B).

6 Although the Committee could redesignate the excessive portions of the contributions,
7 the regulations require that it provide notice to the contributors of the amount it redesignates and
8 the opportunity to request a refund. *See* 11 C.F.R. § 110.1(b)(5)(ii)(B)(5). The Committee did
9 not appear to provide the required notice. Further, the Committee seems to have misreported the
10 date it received the contributions on its July Quarterly Report, in violation of 11 C.F.R. § 104.8.⁶
11 In light of the amounts at issue and the fact that the contributions appear to have been intended to
12 be split between the primary and general elections, the Commission exercises its prosecutorial
13 discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), and dismisses this matter as to
14 Strickland for Congress 2012 and Lysa Ray in her official capacity as treasurer.

⁶ The Committee explains it received both contributions before the primary election but was unable to process them until June 28, 2012. It also did not backdate the contributions in its July Quarterly Report because it "thought that [it was] improper." Committee Resp. at 1.